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265 NLRB No. 101

D--9542
Elmhurst, IL

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TUF-FLEX GLASS, A PART OF
LIBBY-OWENS-FORD COMPANY

and

Case 13--CA--22374

MISCELLANEOUS WAREHOUSEMEN,
AIRLINE, AUTOMOTIVE PARTS
SERVICE TIRE AND RENTAL,
CHEMICAL & PETROLEUM, ICE,
PAPER & RELATED CLERICAL &
PRODUCTION EMPLOYEES UNION, 781,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed on July 12, 1982, by Miscellaneous Warehousemen, Airline, Automotive Parts Service Tire and Rental, Chemical & Petroleum, Ice, Paper & Related Clerical & Production Employees Union, 781, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Tuf-Flex Glass, a part of Libby-Owens-Ford Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on August 2, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices

affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 25, 1982, following a Board election in Case 13--RC--15702, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about July 3, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 11, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 23, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 26, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment

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[1] Official notice is taken of the record in the representation proceeding, Case 13--RC--15702, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits that, on April 10, 1981, the Board conducted a secret-ballot election in which a majority of the unit employees selected the Union and that, on June 25, 1982, the Board certified the Union as the exclusive bargaining representative of the unit employees; however, Respondent denies that the Union is the exclusive representative of the unit employees for the purposes of collective bargaining. Respondent admits that, by letter dated June 29, 1982, the Union requested it to bargain and that, by letter dated July 3, 1982, it failed and refused to recognize and bargain with the Union. Respondent also admits that, by letter dated June 29, 1982, the Union requested certain information and that, by letter dated July 3, 1982, it failed and refused to furnish the Union with the requested information; however, Respondent denies that the requested information is necessary for, and relevant to, the Union's performance of its function as the exclusive bargaining representative of the unit employees. Respondent admits that its purpose in refusing to bargain with

the Union and in refusing to furnish the Union with the requested information was to test and obtain court review of the Board's certification of the Union as the exclusive collective-bargaining representative of the unit employees. Finally, Respondent denies that it has violated Section 8(a)(5) and (1) of the Act.

In the Motion for Summary Judgment, the General Counsel contends that Respondent's answer attempts to relitigate issues which were raised and determined by the Board in the underlying representation case and that there are no genuine issues of material fact remaining to be resolved by a hearing. In its memorandum in opposition to the Motion for Summary Judgment, Respondent argues that material facts do remain at issue, specifically as to whether the Union's alleged agent, Arias, made threats of retribution and lawsuits which influenced unit employees to vote for the Union in the election.

Our review of the record herein, including the record in Case 13--RC--15702, reveals that, pursuant to a Stipulation for Certification Upon Consent Election approved on March 20, 1981, an election was held on April 10, 1981. The tally of ballots shows 14 votes cast for the Union, 8 votes cast against the Union, and 2 challenged ballots. The challenged ballots were not sufficient in number to affect the results of the election. On April 17, 1981, Respondent filed timely objections to conduct affecting the results of the election, alleging that the Union's agents made significant misrepresentations to unit employees, made threats to unit employees, and otherwise coerced unit employees into voting for the Union. On May 27, 1981, the Acting

Regional Director issued a Report on Objections, in which he recommended that all three of Respondent's objections be overruled in their entirety and that a certification of representative be issued. On June 16, 1981, Respondent filed exceptions with the Board to the Acting Regional Director's Report on Objections. On September 15, 1981, the Board issued a Decision and Order Directing Hearing,[2] in which it adopted the Acting Regional Director's recommendation that Respondent's first objection alleging misrepresentations be overruled, but directed that a hearing be held to resolve the substantial and material issues raised by Respondent's second and third objections alleging threats and other coercive conduct. A hearing was held on various dates in October and November 1981, before Hearing Officer Michael A. Garrigan. On January 18, 1982, the Hearing Officer issued a Report on Objections, in which he recommended that Respondent's second and third objections alleging threats and other coercive conduct be overruled in their entirety. On February 18, 1982, Respondent filed exceptions with the Board to the Hearing Officer's Report on Objections.[3] On June 25, 1982, the Board issued a Supplemental Decision and Certification of

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[2] Not reported in volumes of Board Decisions.

[3] Respondent contended, inter alia, that the Hearing Officer erred in finding that Arias was not an agent of the Union, that Arias' statements were not attributable to the Union, and that Arias' threats and other statements were not otherwise objectionable.

Representative,[4] in which it adopted the Hearing Officer's recommendations that Respondent's second and third objections be overruled in their entirety.

The Union, by a letter dated June 29, 1982, requested Respondent to set up a meeting for negotiations on a collective-bargaining agreement and also requested Respondent to furnish it with the names, addresses, job classifications, and wage rates of the employees in the bargaining unit. Respondent, by a letter dated July 3, 1982, acknowledged receipt of the Union's letter and stated it would not bargain collectively or furnish the requested information because the Board's certification of the Union was improper and contrary to law.

Respondent denies that the information requested by the Union was necessary for, and relevant to, the Union's performance of its function as the exclusive bargaining representative of the unit employees. It is well settled that wage and employment information pertaining to bargaining unit employees is presumptively relevant for purposes of collective bargaining and must be provided upon request to the employees' bargaining representative.[5] Respondent has not attempted to rebut the

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[4] 262 NLRB No. 53.

[5] Lighthouse for the Blind of Houston, 248 NLRB 1327 (1980); Verona Dyestuff Division Mobay Chemical Corporation, 233 NLRB 109, 110 (1977). Moreover, a union is not required to demonstrate the exact relevance of such information unless the employer has submitted evidence sufficient to rebut the presumption of relevance. Curtiss-Wright Corporation, Wright Aeronautical Division v. N.L.R.B., 347 F.2d 61 (3d Cir. 1965), enfg. 145 NLRB 152 (1963).

presumptive relevance of the information requested by the Union. Rather, in its July 3, 1982, letter to the Union, it stated it would not furnish the requested information because the Board's certification was improper and contrary to law. In addition, Respondent admits that its purpose in refusing to bargain with the Union and in refusing to furnish the Union with the requested information was to test and obtain court review of the Board's certification of the Union as the exclusive collective-bargaining representative of the unit employees. Thus, it is clear that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the underlying representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[6]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice

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[6] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

proceeding.[7] Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is, and has been at all times material herein, an Ohio corporation with its principal office and place of business at 752 Larch Avenue, Elmhurst, Illinois, which is engaged in the business of manufacturing glass products. Respondent has annually shipped and received goods valued in excess of $50,000 directly to and from points located outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Miscellaneous Warehousemen, Airline, Automotive Parts Service Tire and Rental, Chemical & Petroleum, Ice, Paper & Related Clerical & Production Employees Union, 781, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

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[7] We find no merit in Respondent's assertion in its memorandum in opposition to the General Counsel's Motion for Summary Judgment that there are genuine issues of fact as to whether the Union's alleged agent, Arias, threatened unit employees and influenced them to vote for the Union.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of Tuf-Flex Glass, a part of Libby-Owens-Ford Company at its facility located at 752 Larch Avenue, Elmhurst, Illinois 60126, but excluding all outside truck drivers, salesmen, professional employees, technical employees, office clerical employees, plant clerical employees, guards and supervisors as defined in the Act.

2. The certification

On April 10, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 13, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on June 25, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about June 29, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit and to furnish it with certain information relevant to and necessary for the purpose of collective bargaining. Commencing on

or about July 3, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit and to provide it with the requested information.

Accordingly, we find that Respondent has, since July 3, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and to furnish it with requested information relevant to and necesary for the purpose of collective bargining, and that, by such refusals, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the

appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Tuf-Flex Glass, a part of Libby-Owens-Ford Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Miscellaneous Warehousemen, Airline, Automotive Parts Service Tire and Rental, Chemical & Petroleum, Ice Paper & Related Clerical & Production Employees Union, 781, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of Tuf-Flex Glass, a part of Libby-Owens-Ford Company at its facility located

at 752 Larch Avenue, Elmhurst, Illinois 60126, but excluding all outside truck drivers, salesmen, professional employees, technical employees, office clerical employees, plant clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since June 25, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 3, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit and to provide it with requested information relevant to and necessary for the purpose of collective bargaining, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Tuf-Flex Glass, a part of Libby-Owens-Ford Company, Elmhurst, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Miscellaneous Warehousemen, Airline, Automotive Parts Service Tire and Rental, Chemical & Petroleum, Ice, Paper & Related Clerical & Production Employees Union, 781, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees of Tuf-Flex Glass, a part of Libby-Owens-Ford Company at its facility located at 752 Larch Avenue, Elmhurst, Illinois 60126, but excluding all outside truck drivers, salesmen, professional employees, technical employees, office clerical employees, plant clerical employees, guards and supervisors as defined in the Act.

(b) Refusing, upon request, to provide the above-named labor organization with information relevant to and necessary for collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Provide the above-named labor organization with the information it has requested for the purpose of collective bargaining, including the names, addresses, job classifications, and wage rates of all employees in the bargaining unit, and with any other information it may request which is relevant to and necessary for collective bargaining.

(c) Post at its Elmhurst, Illinois, facility copies of the attached notice marked ''Appendix.''[8] Copies of said notice, on

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[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

forms provided by the Regional Director for Region 13 after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. December 8, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Miscellaneous Warehousemen, Airline, Automotive Parts Service Tire and Rental, Chemical & Petroleum, Ice, Paper & Related Clerical & Production Employees Union, 781, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse, upon request, to provide the above-named Union with information relevant to and necessary for collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees of Tuf-Flex Glass, a part of Libby-Owens-Ford Company at its facility located at 752 Larch Avenue, Elmhurst, Illinois 60126, but excluding all outside truck drivers, salesmen, professional employees, technical employees, office clerical employees, plant clerical employees, guards and supervisors as defined in the Act.

WE WILL provide the above-named Union with the information it has requested, including the names, addresses, job classifications, and wage rates of all employees in the bargaining unit, and with any other information it may request which is relevant to and necessary for collective bargaining.

TUF-FLEX GLASS, A PART OF
LIBBY-OWENS-FORD COMPANY

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 312--353--7597.